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CLEARINGHOUSE RULE 97-099

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

2. Form, Style and Placement in Administrative Code

a. A title should be included for s. Ins 2.14 (1) because all of the other subsections in s. Ins 2.14 have titles. [See s. 1.05 (1), Manual.]

b. In s. Ins 2.14 (2) (a), the phrase “State Life Insurance Fund” should not be capitalized. [See s. 1.01 (4), Manual.]

c. In s. Ins 2.14 (2) (a), the phrase “shall apply” should be replaced by the word “applies.” Section Ins 2.14 (2) (b) (intro.) indicates that “Unless otherwise specifically included, this section *shall not* apply to:” (Emphasis added.) The emphasized part of the phrase should be changed to “does not.” [See s. 1.01 (2), Manual.]

d. Section Ins 2.14 (3) (f) (intro.) indicates that ““Policy summary” means a written statement in substantially the same format for all companies and describing only the guaranteed elements of the policy including but not limited to:”. Section Ins 2.14 (3) (f) 1. to 7. then describes various items which must be included in a policy summary. Substantive provisions should not be incorporated as part of a definition. [See s. 1.01 (7) (b), Manual.]

e. In s. Ins 2.14 (3) (g) 3., the parenthetical notations surrounding the final sentence should be removed.

f. In the first and second sentences of s. Ins 2.14 (4) (b), the word “must” should be changed to “shall.” [See s. 1.01 (2), Manual.] This comment also applies to s. Ins 2.14 (4) (g) (intro.) and 1. and (5) (d).

g. In the second sentence of s. Ins 2.14 (4) (b), the word “thereof” should be eliminated. [See s. 1.01 (9) (c), Manual.] The phrase “in a manner as to not minimize or render any portion thereof obscure” could be changed to “in a manner that does not minimize any information or make any information obscure.” Similarly, in s. Ins 2.14 (5) (h), the word “thereto” should be eliminated.

h. In s. Ins 2.14 (4) (g) 2., the phrase “index(es) is (are)” should be replaced by the phrase “indices are.”

4. Adequacy of References to Related Statutes, Rules and Forms

a. In the statutory authority provision in the analysis, it appears that the reference to s. 600.01 (2), Stats., should be changed to s. 601.01 (2), Stats. Also, it appears that the statutory authority provision should include s. 628.38, Stats., which provides that the Commissioner of Insurance (Commissioner) may, by rule, require insurers to deliver to prospective buyers of life or disability insurance information consistent with ss. 601.01 and 628.34, Stats.

b. In the statutes interpreted provision in the analysis, it appears that the reference to s. 600.01, Stats., should be changed to s. 601.01, Stats. Also, it appears that the statutes interpreted provision should refer to s. 628.34, Stats., rather than restricting it to s. 628.34 (12), Stats., which simply provides authority to make rules defining unfair trade practices. In addition, s. Ins 2.14 (1) indicates that s. Ins 2.14 interprets ss. 628.34 and 628.38, Stats. Section Ins 2.14 (1) and the analysis should be made consistent regarding which statutes are being interpreted.

c. Section Ins 2.14 (2) (b) indicates that “Unless otherwise specifically included, this section shall not apply to: [annuities and several enumerated types of insurance].” However, it does not appear that s. Ins 2.14 specifically includes annuities or any of the enumerated types of insurance. If that is the case, then the phrase “Unless otherwise specifically included,” should be eliminated. On the other hand, if certain provisions of s. Ins 2.14 do apply to annuities or the enumerated types of insurance, then it would be helpful to cross-reference these provisions in s. Ins 2.14 (2) (b) (intro.), for example, by stating that “Except as provided in ____, this section does not apply to:”

d. Section Ins 2.14 (3) (f) 5. e. refers to “guaranteed cash surrender values above.” The word “above” should be replaced by a cite to the pertinent provision.

e. Section Ins 2.14 (5) (e) indicates that any sales presentation subject to s. Ins 2.14 shall comply with the requirements of s. Ins 2.16 (7) (b) and (c). Is that intended to mean that such a sales presentation is not subject to, for example, s. Ins 2.16 (7) (a), which prohibits advertising that exaggerates a benefit or minimizes a cost by overstatement, understatement or incompleteness or that omits or includes information to mislead or deceive purchasers? According to s. Ins 2.16 (1), the requirements of s. Ins 2.16 are “in addition to and not a substitute for the requirements set forth in ss. Ins 2.14, ~~and 2.15, and 2.17.~~” Thus, it is unclear why s. Ins 2.16 (7) (b) and (c) are singled out for cross-reference. This comment also applies to: (1) s. Ins 2.14 (5) (f), which refers to the requirements of s. Ins 2.16 (6); and (2) s. Ins 2.14 (5) (h), which refers to the requirements of s. Ins 2.16 (21).

f. Section Ins 2.16 (3) (a) 2. refers to “the ‘Buyer’s Guide to Life Insurance’ as set forth in s. Ins 2.14 , Appendix I.” However, this appendix is deleted with the repeal of s. Ins 2.14 by

the rule. This phrase should be changed to “the buyer’s guide to life insurance as defined in s. Ins 2.14 (3) (d)” or “the buyer’s guide to life insurance as required in s. Ins 2.14 (4) (c).” Since the existing provisions in s. Ins 2.16 (3) (a) 2. all refer to terms “as defined” elsewhere, the former substitution may be the most appropriate.

Section Ins 2.16 (3) (a) 2. also adds a reference to “a basic illustration as set forth in s. Ins 2.17 (3) (b).” While s. Ins 2.17 (3) (b) defines “basic illustration,” that paragraph does not set forth any requirements with respect to a basic illustration. Those requirements are included in s. Ins 2.17 (6). Again, it may be preferable to refer to “a basic illustration as defined in s. Ins 2.17 (3) (b).”

g. In s. Ins 2.16 (3) (a) 2., the reference to “s. Ins 21.5 (4) (c)” should be changed to “s. Ins 2.15 (4) (c).”

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In the third bullet point in the analysis, the comma following the word “elements” should be deleted.

b. In the fifth bullet point in the analysis, the phrase “most current” is inappropriate. [See s. 1.01 (9) (b), Manual.] (Even if the word “current” were acceptable, it would be unnecessary to qualify it by referring to the “most current.”) It appears that the reference should be to the latest published version of the National Association of Insurance Commissioners (NAIC) Life Insurance Buyer’s Guide.

On a related note, s. Ins 2.14 (4) (c) indicates that the insurer shall provide a copy of the Life Insurance Buyer’s Guide. However, there is no requirement in s. Ins 2.14 (4) (c) or in the definition of “life insurance buyer’s guide” in s. Ins 2.14 (3) (d) that the version of the document that is distributed be the latest published version. This should be specified in the text of the rule.

c. In the sixth bullet point in the analysis, the phrase “a the basic” should be changed to delete one of the articles.

d. In the last bullet point in the analysis, a comma should be inserted after the word “for.”

e. A period should be inserted after references to subdivision numbers in the rule, for example, in s. Ins 2.14 (3) (b) 2. and (g) 2., 4. and 5. Also, in s. Ins 2.16 (3) (a) 2., a period should be inserted after the subdivision number.

f. Section Ins 2.14 (3) (f) (intro.) indicates that “‘Policy summary’ means a written statement in substantially the same format for all companies and describing only the guaranteed elements of the policy including but not limited to:” Section Ins 2.14 (3) (f) 1. to 7. then describes various items that must be included in a policy summary. Short of the requirement about the inclusion of various items, it is unclear how there is any assurance that all companies are using substantially the same format. If there are additional requirements, they should be stated. If there are no additional requirements, it appears that the phrase “in substantially the same format for all companies and” could be deleted as it provides no additional information.

g. Section Ins 2.14 (3) (f) 2. refers to an “insurance intermediary” and to an “intermediary.” [Although it is not stated, it appears that an “intermediary” has the same meaning as that in s. 628.02 (1), Stats.] Rather than use two different terms, one term should be selected and used consistently.

h. Section Ins 2.14 (3) (f) 5. (intro.) refers to “The following amounts, where applicable, for the first 20 policy years and at least one age from 60 through 65 or maturity whichever is earlier:”. It would be helpful to insert the word “for” following the word “and” in order to make it clearer that two separate amounts must be shown. Also, with respect to the latter amount, it is not clear if the comparison between earlier events is a comparison of age 65 and maturity or a comparison of the age selected between ages 60 to 65 and maturity. The analysis helps clarify this by referring to “at least one year between age 60 and 65, or maturity, whichever is earlier.” Assuming that the analysis is accurate, the rule should be clarified by including language similar to that in the analysis.

i. In s. Ins 2.14 (3) (g) 2., a comma should be inserted after the word “that” and before the word “if” in order to set off the phrase “if paid at the beginning of each year.”

j. In s. Ins 2.14 (3) (g) 3., the phrase “without separate” should be changed to “without a separate.”

k. Section Ins 2.14 (4) (g) (intro.) should end with a colon rather than a period. Also, the phrase “the following disclosures must be provided” should be changed to “all of the following disclosures shall be provided.” In addition, the items in s. Ins 2.14 (4) (g) 1. and 2. are written as complete sentences rather than items on a list; thus, there is no direct link to the introductory language in s. Ins 2.14 (4) (g) (intro.). This should be remedied, for example, by: (1) deleting the phrase “must appear” in s. Ins 2.14 (4) (g) 1.; and (2) changing the phrase “indexes shall include” in s. Ins 2.14 to “indexes, including.”

l. The quotation mark should be deleted at the end of s. Ins 2.16 (1).